Remarks

Claims 1 – 20 and 29 are pending.

Claims 1, 3 – 5, 7, 9, 10, 12, 15, 16, 19, and 29 are provisionally rejected on the ground of non-statutory obviousness-type double patenting over claims 1, 2, 4 – 8, 10, 15, and 16 of co-pending U.S. Application No. 10/689,168 (hereinafter '168) in view of Choyi et al. U.S. Patent No. 7,339,928 (hereinafter Choyi).

Claims 1, 3 – 5, 7, 9, 10, 12, 15, 16, 19, and 29 are provisionally rejected under 35 U.S.C. §103(a) as being obvious over '168 application.

Claims 1 – 20 and 29 are rejected under 35 U.S.C. §103(a) as being unpatentable over co-pending '168 application and further in view of Choyi.

Each of the various rejections and objections are overcome by amendments that are made to the specification, drawing, and/or claims, as well as, or in the alternative, by various arguments that are presented.

Any amendments to any claim for reasons other than as expressly recited herein as being for the purpose of distinguishing such claim from known prior art are not being made with an intent to change in any way the literal scope of such claims or the range of equivalents for such claims. They are being made simply to present language that is better in conformance with the form requirements of Title 35 of the United States Code or is simply clearer and easier to understand than the originally presented language. Any amendments to any claim expressly made in order to distinguish such claim from known prior art are being made only with an intent to change the literal scope of such claim in the most minimal way, i.e., to just avoid the prior art in a way that leaves the claim novel and not obvious in view of the cited prior art, and no equivalent of any subject matter remaining in the claim is intended to be surrendered.

Also, since a dependent claim inherently includes the recitations of the claim or chain of claims from which it depends, it is submitted that the scope and content of any dependent claims that have been herein rewritten in independent form is exactly the same as the scope and content of those claims prior to having been rewritten in independent form. That is, although by convention such rewritten claims are labeled herein as having been "amended," it is submitted that only the format, and not the content, of these claims has been changed. This is true whether a dependent claim has been rewritten to expressly include the limitations of those claims on which it formerly depended or whether an independent claim has been rewritten to include the

limitations of claims that previously depended from it. Thus, by such rewriting no equivalent of any subject matter of the original dependent claim is intended to be surrendered. If the Examiner is of a different view, he is respectfully requested to so indicate.

Double Patenting

Claims 1, 3 – 5, 7, 9, 10, 12, 15, 16, 19, and 29 are provisionally rejected on the ground of non-statutory obviousness-type double patenting over claims 1, 2, 4 – 8, 10, 15, and 16 of '168 application in view of Choyi.

The '168 application is a co-pending application for which a notice of allowance has been mailed on October 28, 2008. Applicants submit herewith a Terminal Disclaimer in accordance with 37 C.F.R. §1.321 to remove the double patenting rejection.

Therefore, the rejection should be withdrawn.

Rejections Under 35 U.S.C. §103(a)

Claims 1, 3 – 5, 7, 9, 10, 12, 15, 16, 19, and 29

Claims 1, 3 – 5, 7, 9, 10, 12, 15, 16, 19, and 29 are provisionally rejected under 35 U.S.C. §103(a) as being obvious over '168 application. The rejection is traversed.

Applicants respectfully submit that '168 application does not qualify as prior art under 35 U.S.C. §102, and thus, is cannot be used to reject the present claims under 35 U.S.C §103(a).

'168 application also does not qualify as prior art under 35 U.S.C. §102(a). MPEP §2132.01 states: "Applicant's disclosure of his or her own work within the year before the application filing date cannot be used against him or her under 35 U.S.C. 102(a). *In re Katz*, 687 F.2d 450, 215 USPQ 14 (CCPA 1982). The authorship of '168 application is identical to the inventorship of the present application. Thus, '168 application is not "by another" and, thus, does not qualify as prior art under 35 U.S.C. §102(a).

Further, '168 application does not qualify as prior art under 35 U.S.C. §102(b). The publication date of '168 application is May 6, 2006. The filing date of the present application is October 20, 2003. Thus, '168 application was not published more than one year prior to the filing date of the present application. Accordingly, '168 application does not qualify as prior art under 35 U.S.C. §102(b).

Moreover, contrary to the Examiner suggestion, '168 application also does not qualify as prior art under 35 U.S.C. §102(e).

35 U.S.C. §102(e) states:

> "A person shall be entitled to a patent unless ...
> e) the invention was described in - (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for the purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language" (emphasis added).

In other words, both sections 102(e)(1) and 102(e)(2) require that a cited application or patent was authored "by another." "Another" means other than applicants, *In re Land*, 368 F.2d 866, 151 USPQ 621 (CCPA 1966), *see also* MPEP §2136.04. However, '168 application is a co-pending application which authorship is identical to the inventorship of the present application. Therefore, '168 application is not "by another" and, thus, does not qualify as prior art under 35 U.S.C. §102(e).

Therefore, '168 application does not qualify as prior art under 35 U.S.C. §102 and thus, the rejection under 35 U.S.C. §103 should be withdrawn.

Conclusion

It is respectfully submitted that the Office Action's rejections have been overcome and that this application is now in condition for allowance. Reconsideration and allowance are, therefore, respectfully solicited.

If, however, the Examiner still believes that there are unresolved issues, the Examiner is invited to call Eamon Wall at (732) 530-9404 so that arrangements may be made to discuss and resolve any such issues.

Respectfully submitted,

Dated: 12/23/08

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